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REMARKS

This responds to the Office Action mailed on January 30, 2004. Claims 1, 5, 16, 22 and 27-33 are amended, no claims are canceled, claims 50-59 are added; as a result, claims 1-33 and 50-59 are now pending in this application.

The title has been amended to more accurately reflect the subject matter of the pending claims. No new matter has been added as a result.

The amendments made herein have been to clarify the claims and are not intended to limit the scope of equivalents to which any claim element may be entitled. The amendments to the claims have support throughout the specification. No new matter has been added as a result. Applicant respectfully requests reconsideration of the above-identified application in view of the amendments above and the remarks that follow.

Claims 1 and 5 were amended to recite that the non-woven laminate does not contain elastic materials or fibers between the at least two outer layers (claim 1) or the at least two layers (claim 5). Claim 16 was amended to recite that the internally wire-tufted laminate does not contain elastic materials or fibers between the at least two layers. Claim 22 was amended to recite that the absorbent sheet does not contain elastic materials or fibers between the at least two outer layers. Support for these amendments can be found in the specification at page 21, lines 17-20.

Claims 27-33 were amended to provide consistent claim language.

Information Disclosure Statement

Applicant respectfully requests that a copy of the 1449 Form, listing all references that were submitted with the Supplemental Information Disclosure Statement (SIDS) filed on September 16, 2003, and the 1449 Form, listing all references that are being submitted with the SIDS being filed herewith, marked as being considered and initialed by the Examiner, be returned with the next official communication.

§112 Rejection of the Claims

Claims 1-21 were rejected under 35 USC § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one

skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The Applicant respectfully traverses this rejection.

The Office Action asserts that the phrase "wherein the nonwoven (internally wire-tufted) laminate does not require elastic materials or fibers" is new matter because this negative limitation is not literally supported by the specification. The Applicant again respectfully submits that the requisite support can be found in the specification at page 21, lines 17-20, which states:

"However, unlike the material in [Lange] 09/751,239, the material of the present invention *does not require* the use of any type of *elastic material or fibers* to produce the soft, tufted product, relying instead on the internally tufted orientation of the layers."

The Applicant therefore submits that the specification provides literal support for the amendment, although Applicant notes that the observation of lack of literal basis in the specification for a negative limitation does not, in and of itself, establish a *prima facie* case for lack of descriptive support under the first paragraph of 35 USC 112. See *Ex parte Parks*, 30 USPQ2d 1234, 1236 (BPAI 1993).

Additionally, according to MPEP 2173.05(i), if alternative elements are positively recited in the specification, any negative limitation or exclusionary proviso may be explicitly excluded in the claims. See also *In re Johnson*, 558 F2d 1008, 1019, 194 USPQ 187, 196 (CCPA 1977). The specification positively recites such alternative elements, including in the sentence noted above, " . . . *relying instead on the internally tufted orientation of the layers.*"

Reconsideration and withdrawal of this rejection are respectfully requested.

§102 Rejection of the Claims

Claims 1-11, 16-27 and 32-33 were rejected under 35 USC § 102(e) as being anticipated by Lange et al. (U.S. 2002/0127937 A1).

The Office Action states that the details of the rejection can be found in paragraphs 9-10 of the previous Office Action dated August 8, 2003. The Office Action also asserts that the amendment to claims 1 and 16 recites that "the nonwoven laminate does not require elastic materials or fibers" and that the use of "comprising" in claims 1 and 16 does not preclude the use of any other material, such as elastic materials or fibers.

Applicant agrees that the language in claims 1 and 16 is open claim language, although these claims also clearly recite that the laminate does not *require* elastic materials or fibers which is in contrast to Lange, which does require such materials.

Applicant again does not admit that Lange is prior art and reserves the right to swear behind it at a later date. Nevertheless, Applicant respectfully submits that the claims are distinguishable over Lane for the reasons argued below and for the reasons argued in the response mailed on November 10, 2003.

Anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration.

Lange discusses a composite material having continuous gathers directed externally, i.e., an externally gathered laminate. Such gathers result from the forces of stretching and retraction by an elastomer core, with retraction occurring after lamination. The gathers in Lange are continuous and directed externally. (The layers in Lange are formed individually and brought together just prior to the calendar/embossing roll). Lange requires, and thus contains, elastic material or fibers to produce the soft, gathered product (See Specification, page 21, lines 18-20).

In contrast, claim 1, as amended, recites a nonwoven laminate comprising at least one layer of tufted material located between at least two outer layers of non-woven material, wherein the nonwoven laminate does not contain elastic materials or fibers between the at least two outer layers.

Claim 5, as amended, recites a nonwoven laminate comprising at least two layers of tufted material oriented to produce an inner tufted laminate, wherein the nonwoven laminate does not contain elastic materials or fibers between the at least two layers.

Similarly, claim 16, as amended, recites an internally wire-tufted laminate comprising at least two coform outer layers surrounding an inner layer of tufted meltblown material, the inner layer having a plurality of inner tufts and valleys and a plurality of outer depressions, the outer depressions visible from an exterior surface of the laminate wherein the internally wire-tufted laminate does not contain elastic materials or fibers between the at least two outer layers.

Claim 22, as amended, recites an absorbent sheet comprising an internally tufted laminate having at least two outer layers, wherein the absorbent sheet does not contain elastic materials or fibers between the at least two outer layers; and an added liquid.

Lange does not teach each element of claims 1 and 5 because, for example, it does not teach a nonwoven laminate that does not contain elastic materials or fibers between the at least two outer layers (claim 1) or the at least two layers (claim 5). Lange also does not teach each element of claims 16 or 22 because, for example, it does not teach an internally wire-tufted laminate (claim 16) or an absorbent sheet (claim 22) that does not contain elastic materials or fibers between the at least two outer layers.

Lange does not anticipate the claims, as amended. Applicant respectfully submits that claims 1, 5, 16 and 22 are allowable in their present form. Since claims 2-4 depend from and further define claim 1, claims 6-11 depend from and further define claim 5, claims 17-21 depend from and further define claim 16 and claims 23-27 and 32-33 depend from and further define claim 22, these claims are also believed to be allowable in their present form. Notification to this effect is respectfully requested.

§103 Rejection of the Claims

Claims 12-15 and 28-31 were rejected under 35 USC § 103(a) as being unpatentable over Lange et al.

Applicant respectfully submits that Lange is not prior art with respect to the present application. A reference asserted under 102(e), (f), or (g) that was commonly owned with an application at the time the invention was made, cannot preclude patentability under 35 U.S.C. 103 of the claims of the application when the application was filed on or after November 29, 1999. *35 U.S.C. 103(c); 1233 OG 55 (April 11, 2000)*. The present application was filed on December 17, 2001, as shown by the attached copy of the Filing Receipt, which is after November 29, 1999. Lange and the present application were, at the time the invention was made, owned by, or subject to an obligation of assignment to, the same person.

Thus, Lange is commonly owned with the present application and is not prior art with respect to all pending claims of the present application. Therefore, the Applicant respectfully requests withdrawal of the rejection under 35 USC 103(a) and reconsideration and allowance of claims 12-15 and 28-31.

AMENDMENT AND RESPONSE UNDER 37 CFR § 1.116 - EXPEDITED PROCEDURE

Serial Number: 10/021867

Filing Date: December 17, 2001

Title: INTERNALLY-TUFTED LAMINATES (AS AMENDED)

Page 13

Dkt: 1443.009US1

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney 515-233-3865 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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By their Representatives,

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Date MARCH 30, 2004

By

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop RCE, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 30 day of March, 2004.

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Signature



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APPLICATION NUMBER	FILING DATE	GRP ART UNIT	FIL FEE REC'D	ATTY. DOCKET NO	DRAWINGS	TOT CLAIMS	IND CLAIMS
10/021,867	12/17/2001	3754	1598	1443.009US1	12	49	7

Schwegman, Lundberg, Woessner & Kluth, P.A.
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CONFIRMATION NO. 5354

FILING RECEIPT



OC000000007388872

Date Mailed: 01/30/2002

Receipt is acknowledged of this nonprovisional Patent Application. It will be considered in its order and you will be notified as to the results of the examination. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. If an error is noted on this Filing Receipt, please write to the Office of Initial Patent Examination's Customer Service Center. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections (if appropriate).

Applicant(s)

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Assignment For Published Patent Application

Kimberly-Clark Worldwide, Inc.;

Domestic Priority data as claimed by applicant

THIS APPLN CLAIMS BENEFIT OF 60/328,341 10/09/2001

Foreign Applications

If Required, Foreign Filing License Granted 01/28/2002

Projected Publication Date: 04/10/2003

Non-Publication Request: No

Early Publication Request: No

Title

Internally tufted laminates and methods of producing same

SEARCHED & INDEXED
SERIALIZED & FILED

FILED

RECEIVED

Preliminary Class

222

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